

APPEAL NO. 021553
FILED JULY 17, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 21, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (carrier) did not waive the right to dispute the compensability of the claimed injury; that the appellant (claimant) was not in a state of intoxication at the time the injury occurred; and that the claimant had disability from September 21 through November 15, 2001. The claimant appeals, asserting that disability continued through the date of the CCH. The carrier urges affirmance.

DECISION

Affirmed.

The hearing officer's determinations regarding carrier waiver and intoxication were not appealed and have become final. Section 410.169.

The hearing officer did not err in reaching the complained-of determination of disability. The disability issue involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). Review of the record shows that even though the claimant was not released to return to work, he had, in fact, returned to the same type of work he was performing at the time of the injury, demonstrating that he did not have disability as that term is defined in Section 401.011(16). In view of the evidence that was presented on the issue of disability, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **FIDELITY & GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge